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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 CARL ALEXANDER WESCOTT,
13

14 Plaintiff,

15 v.

16 MONETTE STEPHENS and MICHELLE
HARRIS,

17 Defendants.
18
19
20
21
22
23

Case No.: 3:17-cv-05837-SK

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT MICHELLE
HARRIS' MOTION TO DISMISS THE
COMPLAINT PURSUANT TO FRCP
RULE 12(B)(6) FOR FAILURE TO
STATE A CLAIM AND SPECIAL
MOTION TO STRIKE FIRST AMENDED
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE § 425.16**

Date: March 26, 2018

Time: 9:30 a.m.

Courtroom: A, 15th Floor

Judge: Magistrate Judge Sallie Kim

24 Defendant Michelle Harris ("Harris"), by and through her counsel, pursuant to Rule 201 and 291
25 of the Federal Rules of Evidence, hereby request that the Court take judicial notice of the following:

26 1. Attached hereto as **Exhibit 14** is a true and correct copy of the Order Granting
27 Respondent's Request for Order Declaring Petitioner Wescott a Vexatious Litigant and Order Granting
28

1 Request for Prefiling Order as to Petitioner Wescott.

2
3 Dated: January 31, 2018

MURPHY, PEARSON, BRADLEY & FEENEY

4
5 By 

6 Arthur J. Harris
Attorneys for Defendant
MICHELLE L. HARRIS

7 AJH.3216397.docx

CERTIFICATE OF SERVICE

I, Maria Diazgranados, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On January 31, 2018, I served the following document(s) on the parties in the within action:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT MICHELLE HARRIS' MOTION TO DISMISS THE COMPLAINT PURSUANT TO FRCP RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AND SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE § 425.16

x

VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

Carl Alexander Wescott
P.O. Box 190875
San Francisco, CA
Phone: (415) 335-5000

Attorney For Plaintiff in Propria Persona

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on January 31, 2018.

By



Maria Diazgranados

EXHIBIT 1

FILED
San Francisco County Superior Court

MAY 01 2017

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 403

HON. GAIL DEKREON, JUDGE PRESIDING

CARL A. WESCOTT,)	Case No. FDI-14-781666
)	
)	ORDER GRANTING RESPONDENT'S
vs.)	REQUEST FOR ORDER DECLARING
)	PETITIONER WESCOTT A VEXATIOUS
MONETTE R. STEPHENS,)	LITIGANT and ORDER GRANTING
)	REQUEST FOR PREFILING ORDERS AS
)	TO PETITIONER WESCOTT.

STATEMENT OF THE CASE:

On June 2, 2014 Petitioner Carl A. Wescott (hereafter "Wescott"), *in propria persona*, filed a Petition for Dissolution to dissolve his marriage with Monette R. Stephens (hereafter "Wife").

Wescott acted *in propria persona* throughout the litigation of this dissolution case, except for one instance when court-appointed counsel defended him in an OSC filed against him by Wife in 2015.

On Dec 18, 2014 Wife requested domestic violence protective orders protecting her from Wescott, Case number FDI-14-781666. After months of continuances a Restraining Order protecting Wife from Wescott was granted on May 13, 2015 with a duration of five years, expiring May 13, 2020.

Case number FDV-14-810782 was consolidated with this case on August 11, 2014.

1 The parties have three children, currently aged 7, 9, and 11 years old.

2 The parties' status as unmarried persons was restored on Oct. 26, 2015; but jurisdiction was reserved
3 on all other pending issues.

4 After more than two years of litigation, a contested trial was held on October 11 and 13, 2016 on all
5 of the reserved issues in the case. The trial judge issued findings and orders on October 13, 2016 holding,
6 *inter alia*, (1) sole legal and physical custody of the minor children was awarded to Wife and (2) the property
7 at 853 Ashbury Ave. in San Francisco, California was awarded to Wife as her sole and separate property.¹ At
8 that trial the court also ordered that Wife need not personally appear to respond to any future filings unless
9 specifically instructed to do so by the Court, in order to protect her from Wescott's litigation tactics in the
10 future, pursuant to CRC Rule 5.113 and Family Code §217.

11 On November 4, 2016 Wife, through her attorney, filed a "*Request for Order Declaring Petitioner a*
12 *Vexatious Litigant*"; (hereafter "RFO"), requesting the court to enter a prefiling Order requiring Wescott to
13 obtain leave from the presiding justice or presiding judge before initiating any new proceedings. In addition
14 Wife filed a "*Request for Judicial Notice in Support of Request for Order Declaring Petitioner a Vexatious*
15 *Litigant*".

16 A hearing on the motion was set for Dec 6, 2016 in Dept 403, one of the two Law and Motion
17 departments of the San Francisco Superior Court's Unified Family Court.

18 Ten days later, on November 14, 2016, Wescott filed his 16th "*Notice of Unavailability*" stating that
19 from Dec 3, 2016 through Dec 8, 2016 he was unavailable for, *inter alia*, any court hearings and that "*The*
20 *same applies to the following time periods: January 1st through February 10th, 2017.*"

21
22
23
24
25 ¹ Judgment was entered effective March 22, 2017.

Only two days later, on November 16, 2016, despite his asserted unavailability, Wescott filed a
 “REPLY REGARDING VEXATIOUS LITIGANT REQUEST” with a note under the Reply title as follows:

[NOTE: Respondent vacated the December 6th hearing and requested a new time in dept. 405, so hopefully this reply can also move to the new hearing date]²

However, Wife had not requested to reset the December 6th hearing date at that time. Not until December 3, 2016 was an oral request to continue the hearing on the RFO submitted on the grounds that Wife’s attorney could not serve Westcott as required before the hearing. The request was granted on Dec. 6, 2017 and the hearing was rescheduled for February 16, 2017 in Dept 403.

The hearing was held on February 16, 2017; the court heard the evidence and arguments and took the matter under submission on that date.

FACTS:

This court accepts the Wife’s invitation to take judicial notice of the fifteen (15) volumes of documents filed in this case.

In this case alone, there was a total of 93 Requests for Orders (hereafter “RFO”) and/or Requests for Order to Show Cause (hereafter “OSC”) filed by both parties, of which Wescott filed 80 out of the 93 filings.

Since August of 2014, Westcott filed fifty-five (55) RFOs³ and twenty-five (25) OSCs. Forty-five (45) of his RFO’s were denied and all twenty-five (25) of his OSC requests were denied. (See Attachment A.)⁴

Recently, Wescott filed two more requests for an OSC on Jan 25, 2017 and on Oct 12, 2016; both of

² The Court’s file reflects a November 8, 2016 letter from Wife’s attorney, cc’d to Wescott, addressed to Judge Massullo requesting the RFO be set in Department 405 based on the attorney’s understanding that Judge Massullo would be presiding over all matters in the case, and requesting the matter be re-set in Dept 405 at a date and time convenient to the Court. The file reflects handwritten notes on Wife’s proposed order that the case was set in Dept 405 on Oct 11, 2016 for a trial re: custody/visitation/financial issues and so Judge Massullo declined to sign the order and the matter would remain in Dept. 403 as calendared on 12-6-16.

³ Requests for Orders are similar to Motions in regular Civil Practice. Requests for Orders address child custody, “visitation”, spousal support, division of property, etc. and typically include more than a single request in one filed RFO

⁴ Wife points out on page 2, lines 4 to 6 that the custody evaluator counted 219 separate filings by Wescott compared to Wife’s 90 filings, the majority of Wife’s filings were in response to Petitioner’s filings.

1 which were denied.

2 On July 7, 2015 the court held: "*Petitioner [Wescott] has repeatedly abused the legal process in*
3 *order to drive up the cost of litigation and to harass the Respondent [Wife]; Petitioner [Wescott] has not been*
4 *truthful or candid with the Court; [and] Petitioner [Wescott] appears to have forged documents and has*
5 *back-dated documents.*"

6 On May 2, 2016 the court found that "*there is a tendency for Petitioner [Wescott] to abuse the*
7 *process to get things done in a timely manner and with a smooth flow*".

8 In addition Wescott has filed, either personally or under the name of a third party, multiple additional
9 suits naming Wife as a defendant, as follows:

- 10 1. San Francisco Superior Court Unlawful Detainer Action, Case No. CUD 14 650652; filed by "Carl
11 Wescott Revocable Trust" seeking to evict Wife and their 3 minor children from the marital home
12 located at 835 Ashbury. The court granted Wife's motion to quash the Summons and Complaint filed
13 on Nov 21, 2014.
- 14 2. Sacramento Superior Court Civil Action, Case No. 34 2014 00272169; filed by "Melissa Cardiff"
15 against Wife for breach of contract to repay a loan taken by Wescott; it was never served upon Wife.
- 16 3. San Francisco Superior Court Civil Harassment Restraining Order Action, Case No. CCH 14 576171;
17 filed under the name of "Tony Carracci"; the matter was dismissed without prejudice when neither
18 party appeared on Oct 8, 2014. Wife had no knowledge of the action on Oct 8, 2014.
- 19 4. San Francisco Superior Court Small Claims action, Case No. CSM 15 848839, for property Wife
20 allegedly retained when Wescott left the address on 853 Ashbury; dismissed without prejudice on
21 March 4, 2015.
- 22 5. U.S. Bankruptcy Court, Northern District of Georgia, Case No. 12-71903-lrc; the initial debtor is
23 Danielle Marie Cochran with Wescott and Wife named as co-debtors. Wife was recently served with
24 a notice of filing of a motion by "co-Trustee "Carl Wescott Revocable Trust" on Oct 12, 2016 asking
25

1 for relief from an automatic stay as to the family home at 853 Ashbury in California. That motion was
 2 filed during the Trial, held Oct 11 and Oct 13, 2016, on the reserved issues addressing that very
 3 property.

4 6. U.S. Bankruptcy Court, Northern District of California, Case No. 16 10905; recently filed by Wescott
 5 as an individual.

6 7. Several international lawsuits in Uruguay, Ecuador and Honduras; Wescott confirmed his
 7 involvement in emails to Wife's counsel accusing Wife of ignoring the suits.

8 Wescott acted *in propria persona* throughout the litigation of this dissolution case with the following
 9 exceptions:

- 10 • Oct 15, 2015 and Dec. 18, 2015, he was represented by a court appointed attorney defending him in a
 11 contempt hearing pursuant to Wife's requested OSC.
- 12 • Jan. 5, 2016, the third day of the contempt hearing resulted in a mistrial when Wescott's relationship
 13 with his appointed attorney broke down and the court granted the attorney's motion, filed
 14 12/30/2015, to be relieved as attorney of record;
- 15 • Jan 29, 2016 the court appointed new counsel to defend Wescott in the second trial on the contempt
 16 issue;
- 17 • March 9, 2016 the first day of the second trial for contempt, the court relieved the second appointed
 18 counsel after dismissing with prejudice the OSC for contempt;
- 19 • March 9, 2016, that same day, Wescott filed a substitution of attorney naming Attorney Cathy Lynn
 20 Trosclair, who signed the consent to represent him; the substitution was NOT limited in scope;
- 21 • However between April 5, 2016 and February 15, 2017 Wescott personally appeared in court *in*
 22 *propria persona* twelve (12) times;
- 23 • Feb 16, 2017 Attorney Trosclair did appear in court to represent Wescott against Wife's RFO to
 24 declare Wescott a vexatious litigant.

LAW:

California Code of Civil Procedure §§391 *et seq.*, which were enacted in 1963, address vexatious litigants. C.C.P. §391(b) defines a vexatious litigant as a person who does any of four things; the relevant definition in this case is C.C.P. §391(b) (3) which states:

“(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.”

The vexatious litigant statutory scheme provides two sets of remedies. First, in pending litigation, a party may move for an order requiring the other party to furnish security on the ground that the other party is a vexatious litigant and has no reasonable probability of prevailing against the party asking for the relief. C.C.P. §391.2(a). Failure to provide the security is grounds for a dismissal. C.C.P. §391.4.

The legislature added a second means to counter misuse of the system when it enacted C.C.P. §391.7 which operates beyond the pending case and authorizes a court to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation *in propria persona* without first obtaining permission from the presiding judge.

For purposes of vexatious litigant statutes in general, the term “litigation” means any civil action or proceeding, commenced, maintained or pending in any state or federal court. C.C.P. §391(a). The statute governing prefiling orders provides an additional definition of the term, for purposes of C.C.P. §391.7 “litigation” includes any petition, application, or motion in a proceeding under the Family Court or Probate Code for any order. C.C.P. §391.7(d). Orders to Show Cause in Family Court proceedings are properly taken into account for determining whether or not a party is a vexatious litigant. *In the Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1348.

The “prefiling order” provision did not displace the remedy provided for defendants in pending actions; rather it added a powerful new tool designed to preclude the initiation of meritless lawsuits and their attendant expenditures of time and costs. This type of “hurdle” effectively makes it more difficult for a

1 vexatious litigant to abuse the judicial process.

2 Additional Safeguards include requiring the clerk of the court to provide to the Judicial Council a
3 copy of any prefiling orders issued pursuant to C.C.P. §391.7 (a). The Judicial Council is required to maintain
4 a record of vexatious litigants subject to those prefiling orders and must annually disseminate a list of those
5 persons to the clerks of the courts of this state. C.C.P. §391.7(e)

6 **CONCLUSION:**

7 The evidence of the history of litigation in this 2 year and 10 month old case shows that Wescott has
8 filed numerous unmeritorious motions and requests for contempt against Wife, as well as numerous lawsuits
9 in federal court, other state courts and foreign jurisdictions against Wife, including filing a motion in the
10 Georgia Bankruptcy Court that would affect issues that were being tried in this case at the time of that filing.

11 Every motion or request for OSC filed by Wescott forced Wife to appear in court and respond to the
12 person from whom she was granted protection in a Restraining Order that required Wescott to stay 100 yards
13 away from her.

14 This court finds that Wescott is a person who has, while acting *in propria persona*, initiated and/or
15 prosecuted numerous meritless litigations, relitigated or attempted to relitigate matters previously determined
16 against him, and repeatedly pursued unmeritorious or frivolous tactics in litigation against Wife in numerous
17 courts and jurisdictions.

18 Therefore, Respondent/Wife's request for order declaring Petitioner/Wescott a vexatious litigant is
19 granted and the request for Prefiling Orders is also granted.

20 **ORDERS:**

- 21 1. Petitioner Carl A. Wescott is a vexatious litigant pursuant to C.C.P. §391(b)(3).
22 2. Petitioner Carl A. Wescott is prohibited from filing any new litigation *in propria persona* in the
23 courts of California without approval of the presiding justice or presiding judge of the court in
24 which the action is to be filed.
25
26

DATED: May 1, 2017


GAIL DEKREON
Judge of the Superior Court

ATTACHMENT "A" – WESCOTT'S HISTORY OF FILINGS

NOTICE OF UNAVAILABILITY (16 filed)

- 5/27/15 Notice of Unavailability of Pro per on JUN-22-2015 through JUN-26-2015 JUL-1-2015 through JUL-06-2015 filed by petitioner Wescott, Carl Alexander
- 7/13/15 Notice of Unavailability of Pro Per on JUL-29-2015 through AUG-4-2015 by petitioner Wescott, Carl Alexander
- 8/6/15 Notice of Unavailability of Pro Per filed by petitioner Wescott, Carl Alexander
- 12/3/15 Notice of Unavailability of Pro Per on NOV-30-2015 through DEC-12-2015 filed by petitioner Wescott, Carl Alexander
- 1/29/16 Notice of Unavailability of Pro Per filed by petitioner Wescott, Carl Alexander as to respondent Stephens, Monette Rosemarie
- 2/19/16 Notice of Unavailability of Pro Per on FEB-24-16 through MAR-2-16 filed by petitioner Wescott, Carl Alexander
- 3/4/16 Notice of unviability of Pro Per on March-28-16 through April-2-16 filed by petitioner Wescott, Carl Alexander
- 4/7/16 Notice of Unavailability of Pro Per on APR-11-16 through APR-13-16 filed by petitioner Wescott, Carl Alexander
- 4/19/16 Notice of Unavailability of Pro Per on MAY-03-16 through MAY-04-16 as well as 5/12/16 to 5/15/16 filed by petitioner Wescott, Carl Alexander
- 5/11/16 Notice of Unavailability of Pro Per on MAY-18-2016 through MAY-24-16 filed by petitioner Wescott, Carl Alexander
- 6/27/16 Notice of Unavailability of Pro Per ON JUN-10-16 through JUN-16-16 filed by petitioner Wescott, Carl Alexander
- 6/9/16 Notice of Unavailability of Pro Per on JUN-16-16 through JUN-17-16 filed by petitioner Wescott, Carl Alexander
- 8/22/16 Notice of Unavailability of Pro Per on AUG-26-16 through SEP- 13-16 filed by petitioner Wescott, Carl Alexander
- 10/13/16 Notice of Unavailability of Pro Per On OCT-11-16 through OCT-12-16 10/13/16-10/25/16; 11/16/16-12/3/16; 12/24/16-/12/14/1; POS attached filed by petitioner Wescott, Carl Alexander
- 2/15/17 *"Please take notice, that for the periods Monday March 20th 2017 at 8:30am, to Monday March 27th at 5pm; Monday April 3rd, 2017 @ 8:30 am through Monday April 10th 2017 @5pm; and Monday April 24th 2017 @ 8:30 am though Monday May 1st 2017 @5pm, Petitioner Carl Wescott will be unavailable..."*
- 11/14/16 *"Please take notice, that for the periods beginning December 3rd 2016, through December 8th 2016, Petitioner Carl Wescott will be unavailable..."* "Same applies to the following time periods Jan 1st through Feb 10th 2017
- 12/6/16 *"Please take notice, that for the periods beginning December 18th 2016, through January 8th 2016, Petitioner Carl Wescott will be unavailable..."*

During these times he asserted he was "unavailable" however Petitioner continued to file RFOs or OSCs:

- 5/27/15
 - 6/3/15 Domestic Violence a on JUN-3-15 off calendar- No appearance by moving party
- 7/13/15
 - 7/29/15 Declaration Filed by petitioner Wescott, Carl Alexander
 - 7/29/15 Responsive Declaration to request for order on calendar on AUG-13-15 at 9:00 am in department 404 (Further) filed by Petitioner Wescott, Carl Alexander as to respondents Stephens, Monette Rosemarie
 - 7/29/15 Responsive Declaration to request for order on calendar on AUG-13-15 at 9:00 am in department 404 filed by Petitioner Wescott, Carl Alexander as to respondents Stephens, Monette Rosemarie
 - 7/29/15 Request to waive court fees and costs pursuant to G.C 68633, CRC 3.51.8.26, and 8.818 (Confidential) filed by petitioner Wescott, Carl Alexander order for waiver of court fees and cost granted⁵ pursuant to G.C 68834 (E), CRC 3.52
- 8/6/15
 - **No dates cited for unavailability**
- 12/13/15
 - 12/3/15 Declaration of Nancy O'Neil filed by petitioner Wescott, Carl Alexander
 - 12/13/15 Declaration of Roger Pollock regarding real estate development activates filed by petitioner Wescott, Carl Alexander
- 1/29/16
 - **No dates cited for unavailability**
- 2/19/16
 - 3/3/16 Proof of personal service "filed to litigant's request" filed by petitioner Wescott, Carl Alexander
- 4/7/16
 - **Did not file any documents in Petitioners unavailable time frame**
- 4/19/16
 - 5/12/15 Request for order Re: Modification of visitation, + order for Dr. Boyd filed by petitioner Wescott, Carl Alexander as to respondent Stephens, Monette Rosemarie hearing set for AUG-12-16 at 9:00 am
- 5/11/16
 - **Did not file any documents in Petitioners unavailable time frame**
- 6/27/16
 - 6/10/16 Modify visitation (additional updated information as of June 10th 2016) filed by petitioner Wescott, Carl Alexander, as to respondent Stephens, Monette Rosemarie
- 6/9/16 Jun16-17
 - **Did not file any documents in Petitioners unavailable time frame**
- 8/22/16
 - **Did not file any documents in Petitioners unavailable time frame**

Orders, Ex partes etc that were denied

- 9/2/14 **DENIED**

⁵ Note while this order was granted it was filed during a period in which Petitioner deemed himself unavailable to the court

- 1 ○ Peremptory challenge
- 2 • 9/23/14 **DENIED**
 - For writ of mandamus, prohibition, or other relief
- 3 • 9/25/14 **Denied**
 - Resp Decl → Wife not have temporary exclusive use of Santa Barbara house
- 4 • 9/25/14 **Denied**
 - The wife not to have temporary exclusive use of SF house
- 5 • 9/25/14 **Denied**
 - That rental value of 2 residences be set at specified requested
- 6 • 9/22/14 **Denied**
 - Contempt (denial of visitation)
- 7 • 10/30/14 **Not judiciable**
 - Order to compel mediation, court took motion off calendar due to its lack of ability to compel mediation
- 8 • 12/30/14 FOAH
 - *"Carl's OSC RE: Contempt; Carl's Order To Show Cause RE: Contempt is **DENIED WITHOUT PREDJUDICE**"*
- 9 • 2/17/15 Mini Minutes
 - *"Petitioner's request re: 730 expert is **DENIED**"*
 - *"Petitioner's request for rental value on property is **DENIED**"*
- 10 • 2/20/15 OSC & Affidavit for contempt
 - **OSC DENIED**
- 11 • 2/23/15 Resp Decl & RFO **DENIED**
 - Requesting return of personal possessions
- 12 • 2/24/15 **DENIED**
 - Order to show cause and affidavit for contempt
- 13 • 3/2/15 FOAH
 - *"Petitioner's request for office costs is hereby **DENIED**"*
 - *"Petitioner's request for sanctions is hereby **DENIED**"*
- 14 • 3/5/15 OSC
 - **OSC Granted, contempt Denied W/O Prejudice**
- 15 • 4/20/15 Minutes
 - Petitioner not present
 - Due to this issue taken off Calendar
- 16 • 4/20/15 **REJECTED**
 - *Your paperwork is being returned to you. This case is under Family Case Resolution. Please follow the order (copy attached) when submitting motions to be filed. "*
- 17 • *"Motion to compel **DENIED**"* 4/22/15 **REJECTED**
 - *"Your paperwork is being returned to you. This case is under Family Case Resolution. Please follow the order (copy attached) when submitting motions to be filed. "*
- 18 • 4/21/15 Mini Minutes
 - Petitioner not present
 - *"Court issues a bench warrant for Petitioner for non –appearance at the contempt hearing*
- 19 • 4/30/15 FOAH **DENIED**
 - *"Petitioner's Request for Order regarding material possessions is **DENIED** in its entirety"*

- 1
- 2 • 4/30/15 FOAH **DENIED**
 - 3 ○ *“Petitioner’s Order to Show Cause and Affidavit for Contempt is discharged without*
 - 4 *prejudice for lack of prima Facie evidence of contempt.”*
- 5 • 4/30/15
 - 6 ○ *“Petitioner’s request for Order is compel is **DENIED**. The court finds that there is no*
 - 7 *outstanding information or documentation for Respondent to proved to Petitioner.”*
- 8 • 5/20/15 FOAH
 - 9 ○ *“Petitioner’s Request for Order to set rent amounts for San Francisco and Santa Barbara*
 - 10 *properties, filed on January 12th, 2015 is **DENIED**”*
 - 11 ○ *“Petitioner’s Request for Order for Modification on October 30th, 2014 re: 730 expert filed*
 - 12 *on January 12th, 2015, is **DENIED**.*
- 13 • 5/22/15 OSC **Denied**
 - 14 ○ Request for Family Case Res. Allegations described a missed visit on Dec 14 2014 but
 - 15 attached order of 10/30/14 does not indicate such visit was supposed to occur.
- 16 • 5/22/15 OSC **Denied**
 - 17 ○ Petitioner alleges that respondent violated a court order form 9/25/14 to produce a monthly
 - 18 accounting there is not prima facie showing that such accounting was to be provided to the
 - 19 petitioner or a third party.
- 20 • 6/3/15 Mini Minutes
 - 21 ○ Petitioner not present hearing **Denied**, as Petitioner did non appear at previous TRO hearing
 - 22 and prior contempt hearing
- 23 • 6/3/15 **Denied**
 - 24 ○ TRO against Wife protecting children
- 25 • 6/30/15 Mini Minutes
 - 26 ○ *“Petitioner’s OSC for Contempt is **DENIED**”*
 - *“Petitioner’s Request for Order for possession of 853 Ashbury, is **DENIED**”*
- 7/20/15 “Further DECL for RFO **Denied**
 - Reducing spousal support from Petitioner to Respondent to \$0
- 7/24/15 OSC Contempt **Denied**
 - Court **Denied** the request for the hearing because the date of filing, 7/20/14 predates the
 - alleged order and violation.
- 8/4/15 FOAH
 - *“Petitioner’s Order to Show Cause and Affidavit for Contempt is **DISCHARGED** on its face*
 - for lack of notice and prima facie evidence of contempt”*
- 8/12/15 OSC Contempt visitation **Denied**
 - Petitioner did not specify what specific order was violated, what data, and how violated
- 8/12/15 OSC Contempt for Visitation **Denied**
 - Petitioner failed to attach the FOAH that specified the visits and the TRO that demonstrated
 - that they were suspended.
- 8/12/15 OSC Contempt for Skype **Denied**
 - Petitioner failed to attach the FOAH that specified the visits and the TRO that demonstrated
 - that they were suspended.
- 8/13/15

- Court admonished Petitioner for the repetitive motions filed; Petitioners request to set aside restraining order was **Denied** w/o prejudice
- 8/24/15 Mini Minutes
 - *"Petitioner's motion for spousal support is **DENIED without prejudice**".*
- 9/18/15 FOAH
 - *"Petitioner's motion to vacate Permanent Restraining order issued on May 13th, 2015 is **DENIED***
- 8/28/15 **DENIED**
 - Already had SS and CS hearings scheduled
- 8/28/15 **DENIED**
 - Issue had already been litigated
- 8/31/15 OSC **Denied**
 - Request for Family centered case resolution OSC re March 12th 2015
- 10/6/15 **DENIED**
 - Checked box that said he hadn't filed for contempt before which is untrue
- 10/8/15 **Denied**
 - Request for family centered case resolution OSC re visitation
- 10/28/15 **Denied**
 - Child support and spousal support hearings are already scheduled
- 12/29/16 Findings and Orders regarding contempt
 - Relieved council for Petitioner and ordered a **MISTRIAL**.
 - *"Based on Mr. Wescott's pattern of unnecessarily prolonging the length and cost of the hearings.. " from this he paid all attorney's fees associated with contempt hearings*
- 3/9/16 Mini Minutes **DISMISSED WITH PREJUDICE**⁶
 - "OSC re contempt filed against petitioner Dismissed with prejudice.
- 3/14/16 **DENIED**
 - Petitioners request for attorney fees Family Code §2030
 - No lack of access to funds
 - Respondent can't pay legal fees for both parties
- 3/29/16 Mini Minutes
 - "Court finds good cause to order the following: Ex Parte request for orders and hereby **GRANTED**. Order shortening Time is hereby **GRANTED**.
- 3/29/16 FOAH
 - *"Petitioners request to remove Respondents move away rights and request for Joint Legal Custody are **DENIED**."*
 - Court grants SOLE Legal and Physical custody to mother
- 5/2/16 Mini Minutes **DENIED**
 - Modify visitation request by Petitioner was denied.
 - Fees sanctioned § 271
- 5/2/16 FOAH
 - *"Respondent's request for a Voluntary family centered case for a Voluntary Family Centered Case Resolution is **GRANTED**."*

⁶ The wife requested to find the father in contempt

- 1 • 5/2/16 **Denied**
 - 2 ○ Ex parte order was not an emergency and lacked merit
 - 3 ○ Further Wescott has prior history of DV and *"abuse of the legal processes to harass Stephens and increase the cost of litigation is basis for the FC §271 fees"*
- 4 • 7/7/16 FOAH
 - 5 ○ *"Petitioner has not been truthful or candid with the court"*
 - 6 ○ *"Petitioner has repeatedly abused the legal process in order to drive up the cost of litigation and to harass the respondent"*
 - 7 ○ *"Petitioner appears to have forged documents and has back-dated documents"*
- 8 • 7/7/16
 - 9 ○ Status update on further pending issues. *"Petitioner has not responded to this proposed order in a timely manner his approval is waived"*
- 10 • 10/13/16 **Denied**
 - 11 ○ OSC and affidavit for contempt denied
 - 12 ○ Petitioner checked a box that claims that he has not previously filed a request with the court that he was trying to find the citee to be in contempt, which he has done repeatedly.
- 13 • 1/25/17 **Denied**
 - 14 ○ Previously filed an OSC and they were denied; this one is denied as well. Petitioner checked a box that claims that he has not previously filed a request with the court that he was trying to find the citee to be in contempt, which is not true. Petitioner checks this box repeatedly.
- 15 • 2/28/17 **Denied**
 - 16 ○ Dec 20th 2016 no proof of service; denied continuance because he had already previously requested two continuances

FILED DEC 12 2016

SAN FRANCISCO COUNTY FL-410

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, State Bar number, and address):

Carl Wescott
PO Box 1304
Sausalito CA 94966

TELEPHONE NO.: 4153355000

FAX NO. (optional):

E-MAIL ADDRESS (optional):

ATTORNEY FOR (name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Unified Family Law

PETITIONER/PLAINTIFF: Carl A. Wescott

RESPONDENT/DEFENDANT: Monette R. Stephens

OTHER PARTY/PARENT:

SUPERIOR COURT

2017 JAN 25 AM 9:24

CLERK OF THE COURT

BY: LORINATAJALA DEPUTY

LORINATAJALA

ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT

CASE NUMBER:

FDI-14-781666

NOTICE!

A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties include jail sentence, community service, and fine.

You are entitled to the services of an attorney, who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.

¡AVISO!

Un proceso judicial por desacato es de índole criminal. Si la corte le declara a usted en desacato, las sanciones posibles incluyen penas de prisión y de servicio a la comunidad, y multas.

Usted tiene derecho a los servicios de un abogado, a quien debe consultar sin demora para obtener ayuda. Si no puede pagar a un abogado, la corte podrá nombrar a un abogado para que le represente.

1. TO CITEE (name of person you allege has violated the orders): MONETTE STEPHENS
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS, TO GIVE ANY LEGAL REASON WHY THIS COURT SHOULD NOT FIND YOU GUILTY OF CONTEMPT, PUNISH YOU FOR WILLFULLY DISOBEYING ITS ORDERS AS SET FORTH IN THE AFFIDAVIT BELOW AND AN ATTACHED AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT AND REQUIRE YOU TO PAY, FOR THE BENEFIT OF THE MOVING PARTY, THE ATTORNEY FEES AND COSTS OF THIS PROCEEDING.

a. Date: _____ Time: _____ Dept.: _____ Rm.: _____

b. Address of court: ☐ same as noted above ☐ other (specify):

Petitioner previously filed OSCs and this appears to be same grounds. OSCs were denied.

Date: 1-11-2017

JUDICIAL OFFICER

AFFIDAVIT SUPPORTING ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT

3. ☒ An Affidavit of Facts Constituting Contempt (form FL-411 or FL-412) is attached.
4. Citee has willfully disobeyed certain orders of this court as set forth in this affidavit and any attached affidavits.
5. a. Citee had knowledge of the order in that
 - (1) ☒ citee was present in court at the time the order was made.
 - (2) ☒ citee was served with a copy of the order.
 - (3) ☒ citee signed a stipulation upon which the order was based.
 - (4) ☐ other (specify):
- ☒ Continued on Attachment 5a(4).
- b. Citee was able to comply with each order when it was disobeyed.
6. Based on the instances of disobedience described in this affidavit
 - a. ☒ I have not previously filed a request with the court that the citee be held in contempt.
 - b. ☐ I have previously filed a request with the court that the citee be held in contempt (specify date filed and results):

☐ Continued on Attachment 6b.

Page 1 of 4

FL-410

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	CARL WESCOTT MONIQUE STEPHENS	CASE NUMBER: FOI 14 781 666
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7. ☐ Citee has previously been found in contempt of a court order (specify case, court, date):

8. ☐ Continued on Attachment 7.
8. ☒ Each order disobeyed and each instance of disobedience is described as follows:
- a. ☒ Orders for child support, spousal support, family support, attorney fees, and court or other litigation costs (see attached *Affidavit of Facts Constituting Contempt* (form FL-411))
 - b. ☒ Domestic violence restraining orders and child custody and visitation orders (see attached *Affidavit of Facts Constituting Contempt* (form FL-412))
 - c. ☐ Injunctive or other order (specify which order was violated, how the order was violated, and when the order was violated):

- ☐ Continued on Attachment 8c.
- d. ☐ Other material facts, including facts indicating that the violation of the orders was without justification or excuse (specify):

- ☐ Continued on Attachment 8d.
- e. ☒ I am requesting that attorney fees and costs be awarded to me for the costs of pursuing this contempt action. (A copy of my *Income and Expense Declaration* (form FL-150) is attached.)

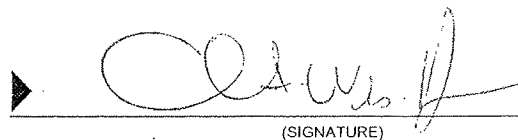
WARNING: IF YOU PURSUE THIS CONTEMPT ACTION, IT MAY AFFECT THE ABILITY OF THE DISTRICT ATTORNEY TO PROSECUTE THE CITEE CRIMINALLY FOR THE SAME VIOLATIONS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/11/2016

Carl A. Wescott

(TYPE OR PRINT NAME)



(SIGNATURE)

INFORMATION SHEET FOR ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Order to Show Cause and Affidavit for Contempt* (form FL-410) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form, as well as the *Affidavit of Facts Constituting Contempt* (form FL-411 or form FL-412). You may wish to consult an attorney for assistance. Contempt actions are very difficult to prove. An attorney may be appointed for the citee.

INSTRUCTIONS FOR COMPLETING THE ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT (TYPE OR PRINT FORM IN INK):

If the top section of the form has already been filled out, skip down to number 1 below. If the top section of the form is blank, you must provide this information.

Front page, first box, top of form, left side: Print your name, address, telephone number, and fax number, if any, in this box. If you have a restraining order and wish to keep your address confidential, you may use any address where you can receive mail. **You can be legally served court papers at this address.**

Front page, second box, left side: Print the name of the county where the court is located and insert the address and any branch name of the court building where you are seeking to obtain a contempt order. You may get this information from the court clerk. This should be the same court in which the original order was issued.

Front page, third box, left side: Print the names of the Petitioner, Respondent, and Other Party/Parent (if any) in this box. Use the same names as appear on the most recent court order disobeyed.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print the court case number in this box. This number is also shown on the most recent court order disobeyed.

Item 1: Insert the name of the party who disobeyed the order ("the citee").

Item 2: The court clerk will provide the hearing date and location.

Item 3: Either check the box in item 3 and attach an *Affidavit of Facts Constituting Contempt* (form FL-411 for financial orders or form FL-412 for domestic violence, or custody and visitation orders), or leave the box in item 3 blank but check and complete item 8.

Item 5: Check the box that describes how the citee knew about the order that has been disobeyed.

Item 6: a. Check this box if you have not previously applied for a contempt order.

b. Check this box if you have previously applied for a contempt order and briefly explain when you requested the order and results of your request. If you need more space, check the box that says "continued on Attachment 6b" and attach a separate sheet to this order to show cause.

Item 7: Check this box if the citee has previously been found in contempt by a court of law. Briefly explain when the citee was found in contempt and for what. If there is not enough space to write all the facts, check the box that says "continued on Attachment 7" and attach a separate sheet to this order to show cause.

Item 8: a. Check this box if the citee has disobeyed orders for child support, custody, visitation, spousal support, family support, attorney fees, and court or litigation costs. Refer to item 1a on *Affidavit of Facts Constituting Contempt* (form FL-411).

b. Check this box if the citee has disobeyed domestic violence orders or child custody and visitation orders. Refer to *Affidavit of Facts Constituting Contempt* (form FL-412).

Information Sheet (continued)

- Item 8: c. If you are completing this item, use facts personally known to you or known to the best of your knowledge. State the facts in detail. If there is not enough space to write all the facts, check the box that says "continued on Attachment 8c" and attach a separate sheet to this order to show cause, including facts indicating that the violation of the orders was without justification or excuse.
- d. Use this item to write other facts that are important to this order. If you are completing this item, insert facts personally known to you, or known to the best of your knowledge. State facts in detail. If there is not enough space to write all the facts, check the box that says "Continued on Attachment 8d" and attach a separate sheet to the order to show cause.
- e. If you request attorney fees and/or costs for pursuing this contempt action, check this box. Attach a copy of your *Income and Expense Declaration* (form FL-150).

Type or print and sign your name at the bottom of page 2.

If you checked the boxes in item 3 and item 8a or 8b, complete the appropriate *Affidavit of Facts Constituting Contempt* (form FL-411), following the instructions for the affidavit above.

Make at least three copies of the *Order to Show Cause and Affidavit for Contempt* (form FL-410) and any supporting *Affidavit of Facts Constituting Contempt* (form FL-411 or FL-412) and the *Income and Expense Declaration* (form FL-150) for the court clerk, the citee, and yourself. If the district attorney or local child support agency is involved in your case, you must provide a copy to the district attorney or local child support agency.

Take the completed form(s) to the court clerk's office. The clerk will provide hearing date and location in item 2, obtain the judicial officer's signature, file the originals, and return the copies to you.

Have someone who is at least 18 years of age, who is not a party, serve the order and any attached papers on the disobedient party. For example, a process server or someone you know may serve the papers. **You may not serve the papers yourself. Service must be personal; service by mail is insufficient.** The papers must be served at least 16 court days before the hearing. The person serving papers must complete a *Proof of Personal Service* (form FL-330) and give the original to you. Keep a copy for yourself and file the original *Proof of Personal Service* (form FL-330) with the court.

If you need assistance with these forms, contact an attorney or the Family Law Facilitator in your county.

FL-412

PETITIONER/PLAINTIFF: Carl A. Wescott	CASE NUMBER:
RESPONDENT/DEFENDANT: Monette R. Stephens	FDI-14-781666
OTHER PARENT:	

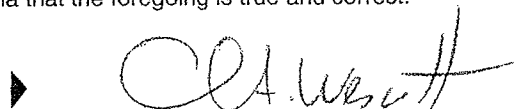
AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation
Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)

1. ☐ The Citee has violated the restraining order issued on (date): _____ by contacting, molesting, harassing, attacking, striking, threatening, sexually assaulting, battering, telephoning, sending any messages to, following, stalking, destroying the personal property of, disturbing the peace of, keeping under surveillance, or blocking movements in public places and thoroughfares of me or any other person protected by the restraining order. (Specify which order was violated, how the order was violated, and when the violation occurred): _____
2. ☐ The Citee has violated the restraining order issued on (date): _____ by not moving from and staying away from the residence as ordered by the court. (Specify how the order was violated and when the violation occurred): _____
3. ☐ The Citee has violated the restraining order issued on (date): _____ by not staying (specify): _____ yards away from me, the other protected persons, my residence, my place of work, the children's school or place of child care, my vehicle, or other (specify): _____ (Specify which order was violated, how the order was violated, and when the violation occurred): _____
4. ☐ The Citee has violated the restraining order issued on (date): _____ by not relinquishing his or her firearm(s) as ordered by the court. (Specify which order was violated, how the order was violated, and when the violation occurred): _____
5. ☐ The Citee has violated the restraining order issued on (date): _____ by failure to complete court-ordered batterer's treatment/anger management class (specify how the order was violated): _____
6. ☒ The Citee has violated order issued on (date): August 5th, 2014 by violating the following custody or visitation order (specify which order was violated, how the order was violated, and when the violation occurred):
See attached, Attachment 6. AND OCT 30th 2014
7. ☐ The Citee has violated the order issued on (date): _____ by violating other orders (specify which order was violated and how the order was violated): _____

☐ Continued on Attachment 1.☐ Continued on Attachment 2.☐ Continued on Attachment 3.☐ Continued on Attachment 4.☐ Continued on Attachment 5.☒ Continued on Attachment 6.☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: 12/5/2016

Carl A. Wescott
(TYPE OR PRINT NAME)


(SIGNATURE)